

Message Text

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TO AMEMBASSY BONN

INFO USMISSION USBERLIN

C O N F I D E N T I A L STATE 091356

E.O. 11652:GDS

TAGS:PFOR, EAIR, US, GW, WB

SUBJECT: PAN AM CLAIM AGAINST FRG OVER 1973 CONTROLLER
SLOWDOWN

REF: A) USBER 686 B) GONN 5625 C) BONN 9688 (1973)

D) BONN 9606 (1973) E) BONN 9551 (1973)

F) STATE 131920 (1973)

1. PAN AM OFFICIALS HAVE ALSO RAISED WITH DEPARTMENT
(DEPUTY ASSISTANT SECRETARY FOR ECONOMIC/BUSINESS
AFFAIRS WALDMANN) QUESTION OF CLAIM AGAINST FRG (REF B)
FOR \$ 5.5 MILLION DAMAGES DUE TO 1973 CONTROLLERS'
SLOWDOWN. IN DISCUSSIONS WITH PAN AM DEPTOFFS
EXPLAINED THAT USG WOULD HAVE TO RESERVE JUDGMENT
WITH RESPECT TO ANY PAN AM CLAIM AGAINST THE FRG
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UNTIL PAN AM PRESENTED DEPARTMENT WITH A MORE THOROUGH
ANALYSIS OF APPLICABLE FRG LAW AND PENDING FRG COURT
DECISIONS POINTING TOWARD POTENTIAL GOVERNMENTAL
LIABILITY TO THE CARRIERS. AS PRELIMINARY MATTER,

HOWEVER, DEPARTMENT AGREES WITH USBER ASSESSMENT (REFTEL A) THAT PAN AM CLAIM IS CONTROVERSIAL WHETHER VIEWED FROM LEGAL OR POLITICAL STANDPOINT.

2. LIKE USBER, WE BELIEVE PAA CAN NOT CREDIBLY CLAIM THAT FRG FAILED TO MEET ITS COMMITMENT UNDER 1952 BONN AGREEMENTS (AS AMENDED IN PARIS 1954) TO "FACILITATE AND ASSIST UNLIMITED AND UNIMPEDED PASSAGE" THROUGH THE FRG TO BERLIN. OUR UNDERSTANDING OF FRG ACTIVITIES DURING THE CONTROLLERS' SLOWDOWN (REFS C, D AND E) IS THAT FRG MADE GENUINE EFFORT TO GIVE IGS AND ALLIED MILITARY FLIGHTS PREFERENCE PRECISELY BECAUSE IT RECOGNIZED ITS OBLIGATION UNDER THIS COMMITMENT.

3. ALTHOUGH WE HAVE LONG BEEN FAMILIAR WITH PAN AM'S DESIRE TO ASSUME FOR ITSELF A LARGER "OFFICIAL" ROLE IN THE IGS THAN IS WARRANTED BY ARRANGEMENTS BETWEEN ALLIES (AND SPECIFICALLY THE US) AND THE AIRLINE, WE ARE UNAWARE OF ANY BASIS FOR THE AIRLINE'S CONTENTIONS THAT ITS SERVICE "IS NOT, AND NEVER HAS BEEN, ONE WHICH IT IS FREE TO CONDUCT OR ABANDON," THAT IT WAS "ASSIGNED THE RESPONSIBILITY FOR PROVIDING AIR SERVICES TO AND FROM BERLIN," AND THAT IT "HAS A PUBLIC SERVICE OBLIGATION STEMMING FROM THE CONVENTION."

4. WE ALSO AGREE WITH THE FRG INTERPRETATION (REF B) THAT PAN AMERICAN HAS NO DIRECT STANDING WITH RESPECT TO THE 1952/1954 CONVENTION REFERRED TO IN PAN AM'S MEMO.

5. IT IS OF COURSE PROBABLE THAT THE AIRLINE LOST REVENUE AS A RESULT OF THE SLOWDOWN, BUT UNTIL WE HAVE STUDIED THE SO FAR MISSING METHODOLOGY AND "PROOF", WE WILL REMAIN SKEPTICAL OF THE PRECISE FIGURES GIVEN. ALTHOUGH PAN AM MAY CONCEIVABLY HAVE A CLAIM AGAINST FRG, IT SEEMS TO HAVE PRESENTED IT THROUGH WRONG CHANNELS, AND OUR PRELIMINARY ASSESSMENT OF THE ARGUMENTATION IS CONFIDENTIAL

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NOT FAVORABLE.

6. FINALLY, WE AGREE WITH USBER (PARA 3 REF A) THAT EFFORT BY PAN AM TO PURSUE THIS CLAIM ALONG THE LINES OF THEIR MEMORANDUM COULD INVITE NEGATIVE FRG REACTIONS AND UNFAVORABLE DECISIONS ON A RANGE OF IGS ISSUES SUCH SUBSIDIES WHERE FRG PLAYS DIRECT ROLE, POSSIBLY CAUSING PAN AM AND US MORE DAMAGE IN THE LONG RUN THAN IT CAN POSSIBLY GAIN.

7. WE BELIEVE EMBASSY SHOULD DISASSOCIATE ITSELF FROM THE PRESENT PAN AM EFFORT, BUT SHOW WILLINGNESS TO DISCUSS FURTHER WITH PAN AM THE QUESTION OF ITS CLAIM,

AND SEEK TO DETERMINE IF THERE ARE OTHER, BETTER,
GROUNDS FOR SEEKING COMPENSATION FROM THE FRG. BEFORE
APPROACHING PAN AM OFFICIALLY ON THIS SUBJECT, HOWEVER,
THE DEPARTMENT WOULD LIKE TO HAVE ANY FURTHER COMMENTS
OR INFORMATION WHICH EMBASSY OR USBER MIGHT HAVE ON
THE SUBJECT OF PAN AM'S MEMO OR THE CONTROLLER STRIKE
ITSELF. FOR INSTANCE, HAS PAN AM FOLLOWED UP ITS OFFER
TO FURNISH FIGURES TO PROVE ITS ALLEGED LOSSES? ONCE
WE HAVE RECEIVED AND CONSIDERED THESE VIEWS, WE WILL
INSTRUCT EMBASSY AND USBER OF THE POSITION THEY SHOULD
TAKE AND WILL ALSO ADVISE PAN AM IN WASHINGTON OF OUR
VIEWS. KISSINGER

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